

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CALIFORNIA ASSOCIATION OF
SANITATION AGENCIES et al.,

Plaintiffs and Appellants,

v.

STATE WATER RESOURCES
CONTROL BOARD et al.,

Defendants and Respondents.

A127207

(Contra Costa County
Super. Ct. No. CIV030956)

ORDER DENYING PETITION FOR
REHEARING AND MODIFYING
OPINION [NO CHANGE IN
JUDGMENT]

BY THE COURT:

The opinion filed August 30, 2012, is modified as follows:

In section III, A., last paragraph, the following language is added immediately after the citation (*United States v. State Water Resources Control Bd.* (198) 182 Cal.App.3d 82, 112-113.):

As explained in *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 231-232 (*Shapell*), the standard of review of quasi-legislative actions is not synonymous with substantial evidence review. Rather, “[t]he appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other. [Citation.] Since the ultimate question is whether the agency has abused its discretion, the answer is one of degree. In each case the court must satisfy itself that the order was supported by the evidence, although what constitutes reasonable evidentiary support may vary depending upon the nature of the

action. [Citations.] A proceeding which has determined individual rights in a factual context will warrant more exacting judicial review of the evidence. Otherwise courts will tend to defer to the presumed expertise of the agency acting within its scope of authority. Our case lies towards that end of the continuum, where the focus is on the reasonableness of the agency's action as a whole."

The opinion would then continue with the last sentence of the last paragraph becoming a separate paragraph as follows:

In an action for ordinary mandamus, the trial court and the appellate court perform the same function, and we review the matter without reference to the trial court's actions. (*McGill, supra*, 44 Cal.App.4th at p. 1786; Code Civ. Proc., § 1085.)

Paragraph III. C. 2. a., second paragraph, second sentence, is modified as follows:

While it is literally true that the assignation of beneficial uses by the tributary rule was not based upon individualized factual analyses, it was not unreasonable or " " "entirely lacking in evidentiary support' " " " (*Shapell, supra*, 1 Cal.App.4th at p. 230) for the Regional Board, as a policy matter, to create a working assumption that "the beneficial uses of any specifically identified water body generally apply to its tributary streams." As the 1995 Basin Plan observed, "it is impractical to list every surface water body in the Region," and, therefore, "in cases [where] a beneficial use may not be applicable to the entire body of water . . . the Regional Water Board's judgment will be applied." Moreover, Terry Oda of the EPA, . . .

The modification does not change the appellate judgment. (Cal. Rules of Court, rule 8.264(c)(2).)

Appellant's petition for rehearing is denied.